IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7635 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KALUBHAI MOHANBHAI & 2 - Petitioner(s)

Versus

DY COLLECTOR RAJULA & 3 - Respondent(s)

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Appearance :

MR BJ JADEJA for Petitioner(s) : 1 – 3.

MR MR MENGDEY, AGP for Respondent (s) : 1.
None for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 29/09/2005

ORAL JUDGMENT

1.In this petition under Article 227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order passed by the

Gujarat Revenue Tribunal dated 26.8.88 passed in Revision Application No.TEN.B.R.19/86 in dismissing the same and confirming the judgment and order passed by the Deputy Collector, Rajula dated 22.1.86 passed in Ceiling Appeal No.5/84 as well as the order passed by the Mamlatdar & ALT (Ceiling), Amreli dated 20.3.84 passed in Ceiling Case No.19/81 in declaring the 35-Acres and 33-Gunthas of land as surplus land from the land bearing Survey No.128-1 paiki from the holding of the respondent No.2-Lilaben Jilubhai-the original declarant.

2. The respondent No.2 herein was holding 86-Acres and 18-Gunthas of land at village Halriya, Taluka Dhari, District Amreli and she submitted an application in the prescribed form under the provisions of the Gujarat Agricultural Lands Ceiling Act and the Mamlatdar & ALT (Ceiling), Amreli by its order dated 13.5.81 declared 35-Acres and 33-Gunthas of land as surplus land from the land bearing Survey No.128-1 paiki. It appears from the record that as the petitioners purchased the said land in question, they filed an appeal before the Deputy Collector, Rajula and the Deputy Collector, Rajula by its order dated 13.6.83 remanded the matter

for hearing the present petitioners. The Mamlatdar & ALT (Ceiling), Amreli thereafter issued notices to the petitioners and other affected persons and after holding necessary inquiry, by its order dated 20.3.84 declared 35-Acres and 33-Gunthas of land from the land bearing Survey No.128-1 paiki as surplus land. Being aggrieved and dissatisfied with the the order passed by the Mamlatdar & ALT (Ceiling), Amreli, the petitioners preferred appeal before the Deputy Collector, Rajula and the Deputy Collector, Rajula by its judgment and order dated 22.1.86 dismissed the said appeal. Being aggrieved and dissatisfied with the same, the petitioners preferred Revision Application No. TEN.B.R.19/86 before the Gujarat Revenue Tribunal and the Gujarat Revenue Tribunal by its judgment and order dated 26.8.88 dismissed the said Revision Application confirming the order passed by both the authorities below. Being aggrieved and dissatisfied with the the judgment and order passed by the Gujarat Revenue Tribunal, the petitioners have preferred the present Special Civil Application under Article 227 of the Constitution of India.

3.Shri B.J.Jadeja, learned advocate appearing on behalf

of the petitioners has vehemently submitted that all the authorities below have materially erred in considering the land purchased by the petitioners in the holding of the respondent No.2-Lilaben Jilubhai as the land in question was already transferred and the possession was already handed over to the petitioners prior to 1971 and therefore, the provisions contained in Section 8 of the Act would not be attracted. It is further submitted that as per the agreement dated 5.6.70, the transferees were holding the land in dispute as on 21.4.71 and therefore, the said land could not have been considered in the holding of Lilaben Jilubhai who had already disposed of it earlier in the year 1970. He has also submitted that in fact, the said Lilaben Jilubhai had three unmarried daughters and they were entitled to separate units which are not granted and therefore also, even no land could have been declared as surplus land from the holding of Lilaben Jilubhai. He has further submitted that in any case if the possession of the surplus land is required to be taken, the same is to be taken first from the land which is in possession of the original land owner and thereafter if still some land is required to be taken as surplus land, the same can be taken from the

land which is in possession of the petitioners as they are the transferees and they have purchased the land in question from the original land owner for full consideration.

4.Per contra, Shri M.R.Mengdey, learned AGP has supported the orders passed by all the three authorities below and has submitted that all the three authorities below have rightly held that the transaction in favour of the petitioners as well as transfer in favour of the petitioners is hit by Section 8 of the Act and therefore, the same is rightly considered in the holding of the respondent No.2 herein-Lilaben Jilubhai -original land owner, which is not required to be interfered with by this Court in exercise of powers under Article 227 of the Constitution of India. So far as the contention on behalf of the petitioners with regard to the separate units of three unmarried daughters is concerned, Shri Mengdey has submitted that under the provisions of the Gujarat Agricultural Lands Ceiling Act, there is no such provision and even otherwise, Lilaben Jilubhai has already accepted the said order and therefore, it is not open for the petitioners to contend the same and therefore, he has

requested to dismiss the present Special Civil Application.

5.Heard the learned advocates appearing on behalf of the parties.

6.Though served, nobody appears on behalf of the respondent Nos.2 to 4-original land owners. It is the contention on behalf of the petitioners that the possession was handed over to them in the year 1970, more particularly, on 24.1.71 and therefore, the provisions contained in Section 8 of the Act would not be attracted and therefore, the land in question could not be considered within the holding of Lilaben Jilubhai who has already disposed of it in the year 1970. It is required to be noted that even as per Section 7 of the Act which was very much there, the transfer was not permissible at all and as such, the sale transaction had taken place after 1971 and as rightly held by the Gujarat Revenue Tribunal no evidence has been produced to show that this land was actually purchased by the registered sale-deed by the applicants prior to 1971 and in fact, it is found that the petitioners had purchased the land in question in

the year 1974 and therefore, it is rightly held by all the three authorities below that the same is hit by Section 8 of the Act and have rightly considered in the holding of Lilaben Jilubhai-original land owner.

7. So far as the contention on behalf of the petitioners with regard to the additional units for unmarried daughters of Lilaben Jilubhai is concerned, it is required to be noted that so far as the petitioners are concerned, they have no locus to challenge the same, more particularly, when Lilaben Jilubhai had not challenged the same. Apart from that, under the provisions of the Gujarat Agricultural Lands Ceiling Act so far as the separate units of the unmarried daughters are concerned, there is no such provision for granting additional units and therefore also, the said contention is not required to be accepted.

8. However, Shri Jadeja, learned advocate appearing on behalf of the petitioners is right in his submission that as the petitioners are the purchasers of the land in question, the authorities are required to first get possession of the surplus land from the land which is in actual possession of the original land owners and

thereafter if possession of any further land needs to be taken over as balance of surplus land, the possession of land is to be taken from the holding of the petitioners and/or from the land which is in possession of the petitioners who are the purchasers as in fact, they have already paid the amount and purchased the land in question for consideration. He is right in making submission that every land holder who has sold the land, will be interested to see that the possession of the surplus land is taken from the land which is sold by him and which is not in his possession. Under the circumstances, the present Special Civil Application is required to be allowed to the aforesaid extent by directing the respondents to first take the possession of the surplus land from the land which is in actual possession of the original land owners and thereafter, if there is any further land of which still possession is required to be taken over being the surplus land, the same is to be taken from the holding of the petitioners i.e. from the land which is in possession of the petitioners.

9. For the reasons stated above, the petition succeeds partly and the Mamlatdar & ALT (Ceiling), Amreli is

directed to first take the possession of the land admeasuring 35-Acres and 33-Gunthas as surplus land first from the land which is in possession of the original land owner-Lilaben Jilubhai and thereafter, if the possession of any remaining land needs to be taken over as surplus land the same should be taken over from the land which is in possession of the petitioners. It is therefore, directed that such an exercise is to be done and taken place within a period of 3 months from the date of receipt of this order. The judgment and order passed by the Gujarat Revenue Tribunal dated 26.8.88 passed in Revision Application No.TEN.B.R.19/86 as well as the order passed by the Mamlatdar & ALT (Ceiling), Amreli dated 20.3.84 passed in Ceiling Case No. 19/81 is modified to the aforesaid extent only.

10.Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.